

ATTACHMENT A
Remarks

Claims 1-17 are pending in the present application. By this amendment, Applicant has amended claims 1-13 and added new claims 14 - 17. Applicant respectfully submits that the present application is in condition for allowance based on the discussion which follows.

Claims 6, 7, 11 and 12 were objected to for containing informalities and claims 2, 7, and 11 were rejected under 35 U.S.C. § 112, second paragraph. By this amendment, Applicant has amended claims 1-13 to present the claims in a more traditional U.S. claim format and to obviate the objections and rejections raised. Further, Applicant has added new claims 14 -16 corresponding to the subject matter previously recited in original claims 9 -11 respectively and therefore new claims 14 – 16 do not constitute new matter. In view of the foregoing, Applicant respectfully submits that the claim amendments obviate the objections and rejections under 35 U.S.C. § 112, second paragraph.

Claims 12 and 13 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,488,152 (hereinafter "Steffann"); and claims 1-11 were rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of Steffan in view of U.S. Patent No. 3,531,039 (Bessett) (hereinafter "Bessett") individually or further in view of U.S. Patent No. 3,550,836 (Macchi).

Contrary to the rejection to the claims as being unpatentable in view of Steffan, Applicant respectfully submits that the presently claimed invention recites elements not disclosed nor in any way obvious from Steffan individually or in view of the further cited references. As correctly identified by the Examiner, a different between the claimed

invention, e.g., as recited in claim 1, and the package disclosed in Steffan is that, according to the present invention of claim 1, the present package has inwardly extending projections on the cover part of the package for engagement with an upper rim portion of a bottom part of the package when the package is in a closed state. The result of the novel arrangement is a more firm and reliable retainment of a cover part to a bottom part when the package is in a closed state than a package according to the Steffan reference. The present inwardly extending projections recited in claim 1 provide a more firm and reliable retainment as a result of at least two factors:

- (1) The retainment means in Steffann, i.e. the openings 14 and the corresponding projections 15, are placed in the vicinity to the bottom edge of the cover part, where the material suffers from less rigidity than further away from the bottom edge portion. Hence, it becomes relatively easy to release the openings and corresponding projections 14 and 15 from mutual engagement and hence, unintentionally, to open the package. For this reason, contrary to Steffann, in the present invention, it is preferable to provide retainment means away from the bottom edge portion of the cover part.
- (2) One very important characteristic of the present package is the combination of the retainment means (e.g., inwardly extending protrusions for engagement with the upper rim portion of the bottom part) and the hinge (5) being provided at a level above the upper rim portion (6) of the bottom part. The effect of providing the hinge at an elevated position leads to an improved grip of the inwardly extending protrusions under the corresponding parts of the upper rim portion than would have been obtained had the hinge been located at the same level as the upper rim portion of the bottom part.

With regard to Bessett, although the Examiner is correct that Bassett does show inwardly extending projections (37), it would not have been obvious to one of ordinary skill in the art to modify the package of Steffann to incorporate the inwardly projections of Bassett to allow for an engagement of the inwardly extending projections with corresponding edge projections of a bottom part. There fails to be any reasonably apparent reason why one of ordinary skill in the art would modify Steffann which includes a hinge at an elevated position above the upper rim of a bottom part, to further include the inwardly extending projections of Bessett to arrive at that presently claimed package. In accordance with *KSR International Co. v. Telefax, Inc. et al.*, 550 U.S. ___, 127 S. Ct. 1727 (2007), when an invention is composed of several elements previously known in the art independently, there must be something that would lead one of ordinary skill in the art to make the combination, i.e., some apparent reason to combine the known elements in the fashion claimed in the patent application at issue. For example, one reason for a combination would be that there would be a known benefit for altering the closest prior art by adding to it or removing from it elements that define the difference between the prior art and the claims at issue. However, the combination of an elevated hinge above the upper rim portion of the bottom part and a retainment means in which the cover part engages with an upper rim portion of the bottom part as noted in (2) above, is not disclosed in the Bessett patent, in Steffann, or anywhere in the art and hence, it would not have been obvious to a person of ordinary skill in the art to combine the teachings of Steffann and Bessett with the aim of arriving at an improved gripping function of the protrusions as recited in the present invention. In fact, it is the

interaction of the protrusions of the cover part with the upper rim of the bottom part, which, in part, provide novelty of the present package.

Furthermore, the combination of these two elements provides features and advantages which would not have been reasonably apparent to one of ordinary skill in the art prior to the present invention. Specifically, one of ordinary skill in the art would not have foreseen the benefit of the claimed combination of locking engagement with inwardly extending projections and a hinge position above the level of the upper rim portion. The benefit of this claim combination is fully disclosed in the present specification as provided in the published international application WO2005/035392 A1, page 3, lines 25-29, which states that

"Furthermore this positioning of the hinge portion [i.e. above the level of the upper rim portion] is advantageous in that it allows the retainment protrusions on the cover part to swing into their retaining position underneath the upper rim portion running along the upper edge region of the bottom part with only a slight deformation of the material of these corresponding retainment portions [i.e. the portions of the rim engaged by the inwardly extending protrusions] during closing and opening of the package."

Thus, by placing the hinge above the level of the upper rim portion of the bottom part it becomes easier (for instance by an automatic closing of the package during loading of the package with eggs in an industrial production plant) to move the protrusions past the upper rim portion without it being necessary to press the cover part downward with such a great force that this would pose a risk of destroying the upper rim portion or the protrusions.

Furthermore, by placing the hinge at the elevated level, an improved locking engagement between the protrusions and the corresponding portions of the upper rim

portion is attained due to the fact that an upwardly directed force component against the bottom surface of the rim portion is obtained, whereas provision of the hinge at the same level as the upper rim portion would not result in said upwardly directed force component. The upwardly directed force component tends to maintain the protrusion and the corresponding portion of the upper rim portion in a locking engagement with each other. By the above combination of locking protrusions for engagement with the upper rim portion and the elevated position of the hinge, the technical problem of how to attain a better, more reliable locking function that furthermore results in less deformation of material of the corresponding retainment portions, which again leads to improve long-time durability of the locking mechanism, is solved by the package defined by claim 1.

It must be emphasized that a problem associated with reducing deformations of the locking members provided on the package during closing and opening of the package is not addressed by the cited prior art references. Moreover, the solution according to the presently claimed invention cannot be derived from the prior art references cited.

Based on the foregoing, the present invention as recited in claim 1 is not obvious from Steffann in view of Bessett. Therefore, Applicants respectfully request that the rejection to claims 1-11 under 35 U.S.C. §103(a) be withdrawn.

Further, with regard to the 35 U.S.C. §102(b) rejection of claims 12 and 13, contrary to the Examiner's assertion, Steffann does not teach a bottom part with an upper rim portion having an outwardly extending protrusion. Although the Examiner alleges that Steffann discloses "the bottom part (2) adjacent to the upper rim portion is provided with at least one outwardly extending protrusion (15) for locking engagement

with co-operating means (14) provided on the cover part (3)" (Examiner citing Steffann, figures 1 and 2), the upper rim portion (e.g., Seffann's upper edge (16), figures 3, 4), does not have an outwardly extending protrusion (15). To the contrary, the projection (15) extends from the side of the package. Projection (15) does not extend from the upper rim portion (16). Accordingly, Steffann does not teach or in any way make obvious the claimed outwardly extending protrusion extending from the upper rim portion of the bottom part as claimed.

Moreover, it would not have been obvious to one of ordinary skill in the art to modify Steffann to change the location of protrusion/projection (15) from a bottom portion of the bottom part (2) to an upper rim portion as recited. The recited location of the outwardly extending projection recited provides features and advantages which would not have been obvious to one of ordinary skill in the art. In particular, having the outwardly extending projection extending from the upper rim portion allows for the corresponding retainment means of the cover part to be located further away from a bottom edge of the cover part when engaged with the outwardly extending projections of the bottom part. As a result, the complementary retainment means of the cover part is spaced further away from the bottom edge of the cover part and thus the retainment means is located in a more rigid location on the cover part.

Therefore as described in the present specification, page 5, lines 2-16, placing the protrusions on the cover part for engagement with the flange-like upper rim portion of the bottom part, results in the complementary retainment means necessarily becoming located further away from the lower-most edge region of the front surface of the cover part than in the package disclosed in Steffann and thus the present

retainment means has increased rigidity than the corresponding retainment means in the cover part of the package according to Steffann. Consequently, the present invention has a superior retainment means and provides for a more secure locking engagement than the one in Steffann which can easily be inadvertently opened due to the retainment means being in the lower-most part of the cover part of his package (see present specification, page 1, line 29-page 2, line 10).

Based on the foregoing, Applicant respectfully submits that claims 12 and 13 are not anticipated by Steffann.

Notwithstanding the foregoing, by the present amendment, Applicant has added new claim 17 which specifically recites the cover part lockingly engages with the upper rim portion of the bottom part. Subject matter basis for claim 17 can be found in the present specification as filed, including the figures and therefore, claim 17 does not constitute new matter. In sharp contrast to claim 17, Steffann discloses its cover part 3 lockingly engages the side surface and not the upper edge 16 of the bottom part. Thus, claim 17 is also not anticipated by Steffann.

In view of the foregoing, Applicant respectfully submits that the present application is in condition for allowance.